

AMENDED IN ASSEMBLY APRIL 27, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2799

Introduced by Assembly Member Shelley
(Principal coauthor: Senator Bowen)

February 28, 2000

An act to amend Sections 6253 and 6255 of, and to add Section 6253.2 to, the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2799, as amended, Shelley. Public records: disclosure.

(1) The California Public Records Act provides that any person may receive a copy of any identifiable public record from any state or local agency upon payment of specified fees. The act provides that it shall not be construed to permit an agency to obstruct the inspection or copying of public records and requires any notification of denial of any request for records pursuant to the act to set forth the names and titles or positions of each person responsible for the denial. The act also requires computer data to be provided in a form determined by the agency.

This bill would provide that nothing in the act shall be construed to permit an agency to delay or obstruct the inspection or copying of public records and would require that the notification of denial of any request for records justifying its withholding to be in writing. This bill would delete the requirement that computer data be provided in a

form determined by the agency and would require any agency that has information that constitutes an identifiable public record that is in an electronic format to make that information available in an electronic format when requested by any person. The bill would require the agency to make the information available in any electronic format in which it holds the information. Because these requirements would apply to local agencies as well as state agencies, this bill would impose a state-mandated local program.

(2) The act requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of the act or that, on the facts of the particular case, the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

~~This bill would authorize the agency or the superior court to disclose a record made exempt under the express provisions of the act if the agency or the superior court determines that, on the facts of the particular case, the public interest served by disclosing the record clearly outweighs the public interest served by not disclosing the record.~~ *require the agency to justify withholding any record in writing.* By imposing *this* new ~~duties~~ *duty* on local public officials, the bill would create a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 6253 of the Government Code is amended to read:

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. As used in this section, “unusual circumstances” means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

1 (2) The need to search for, collect, and appropriately
2 examine a voluminous amount of separate and distinct
3 records that are demanded in a single request.

4 (3) The need for consultation, which shall be
5 conducted with all practicable speed, with another
6 agency having substantial interest in the determination
7 of the request or among two or more components of the
8 agency having substantial subject matter interest therein.

9 (d) Nothing in this chapter shall be construed to
10 permit an agency to delay or obstruct the inspection or
11 copying of public records. The notification of denial of
12 any request for records required by Section 6255 shall set
13 forth the names and titles or positions of each person
14 responsible for the denial.

15 (e) Except as otherwise prohibited by law, a state or
16 local agency may adopt requirements for itself that allow
17 for faster, more efficient, or greater access to records than
18 prescribed by the minimum standards set forth in this
19 chapter.

20 SEC. 2. Section 6253.2 is added to the Government
21 Code, to read:

22 6253.2. (a) Unless otherwise prohibited by law, any
23 agency that has information that constitutes an
24 identifiable public record that is in an electronic format
25 shall make that information available in an electronic
26 format when requested by any person and, when
27 applicable, shall comply with the following:

28 (1) The agency shall make the information available in
29 any electronic format in which it holds the information.

30 (2) Each agency shall provide a copy of an electronic
31 record in the format requested if the requested format is
32 one that has been used by the agency to create copies for
33 its own use or for provision to other agencies. Direct costs
34 of duplication shall include the costs associated with
35 duplicating electronic records.

36 (b) Nothing in this section shall be construed to
37 require the public agency to reconstruct a report in an
38 electronic format if the agency no longer has the report
39 itself available in an electronic format.

1 (c) Nothing in this section shall be construed to permit
2 an agency to make information available only in an
3 electronic format.

4 (d) Nothing in this section shall be construed to permit
5 public access to records held by the Department of Motor
6 Vehicles to which access is otherwise restricted by statute.

7 SEC. 3. Section 6255 of the Government Code is
8 amended to read:

9 6255. ~~(a)~~—The agency shall justify withholding any
10 record in writing by demonstrating that the record in
11 question is exempt under express provisions of this
12 chapter or that on the facts of the particular case the
13 public interest served by not disclosing the record clearly
14 outweighs the public interest served by disclosure of the
15 record.

16 ~~(b) Notwithstanding any provision of this chapter, an~~
17 ~~agency, or the superior court in any action brought~~
18 ~~pursuant to Section 6259, may disclose or order to be~~
19 ~~disclosed any record made exempt by express provisions~~
20 ~~of this chapter if, on the facts of the particular case, the~~
21 ~~public interest served by disclosing the record clearly~~
22 ~~outweighs the public interest served by not disclosing the~~
23 ~~record.~~

24 SEC. 4. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.